IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2392 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ASHOKBHAI SHIVNATH JAYSWAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2392 of 2002

MR HR PRAJAPATI for Petitioner No. 1

MR SAMIR DAVE AGP for Respondents

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 02/05/2002

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 28/1/2002 passed by the Police Commissioner, Ahmedabad City and he has been

declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, against the impugned detention order, the detaining authority has passed the impugned detention order relying upon two offences registered against the petitioner under Prohibition Act and also relying upon statements of two witnesses. The learned advocate for the petitioner has further submitted that in the list of documents, provided by the detaining authority to the detenu along with the investigation papers relying upon which the detaining authority has passed the impugned detention order, at Sr.No.29 it is mentioned that there is a statement of Arunaben Kantilal on page 97 and 98 of compilation provided by the detaining authority to the detenu, but in fact, on page 97 and 98, there is a statement of Saralaben Kantilal and not statement of Arunaben Kantilal, and thus, the detaining authority has not provided statement of Arunaben Kantilal as mentioned at Sr.No.29, though the detaining authority has relied upon the statement of Arunaben Kantilal while passing the detention order, and thereby the detaining authority has prevented the petitioner from making an effective representation which is unconstitutional. When the detaining authority has relied upon the said documents for the purpose of passing the order of detention against the detenu, it is the duty of the detaining authority to provide such documents to the petitioner. However, the detaining authority has failed to discharge his duty. Even no affidavit has been filed by the State authority. It has been held in a judgment delivered by this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Ors. reported in 2000(1) G.L.H. 393 as under:

> "Before parting with the matter, we may observe that recently, we have come across few cases wherein no counter-affidavits are filed by the respondents. It is settled law that whenever an order of detention is challenged by a detenu or by his "next friend", it is the duty of the authorities to justify the action by filing counter-affidavit preferably by the detaining

authority himself, unless there are circumstances which may justify filing of affidavit by an officer or authority other than the detaining authority".

4. Since the material documents relying on which the impugned detention order has been passed by the detaining authority, have not been supplied by the detaining authority to the petitioner, nor affidavit has been filed either by the detaining authority or by the State authority explaining the action of the detaining authority for not providing the documents on which the detaining authority has relied upon while passing the impugned detention order, the petitioner is prevented from making an effective representation and hence the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

5. The petition is allowed. The impugned order of detention dated 28/1/2002 passed against the detenu is hereby quashed. The detenu namely Ashokbhai Shivnath Jayswal is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. D.S. Permitted.

(R.P.DHOLAKIA,J.)

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